

PT 97-40

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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MT. CARROLL ILLINOIS POST #67	)		
AMERICAN LEGION	)	Docket #	95-08-012
Applicant	)		
	)	Parcel Index #	10-900-003-00
v.	)		
	)		
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

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RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at 100 W. Randolph Street, Chicago, Illinois on April 18, 1997, to determine whether or not Carroll County Parcel Index No. 10-900-003-00 qualified for a property tax exemption during the 1995 assessment year.

Melvin Kehl, Commander of the Mt. Carroll Illinois Post 67 American Legion (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a veterans organization; and lastly, whether these parcels were used by the applicant for exempt purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during the entire 1995 assessment year. It is also determined that the applicant is a veterans organization. Finally, it is determined that the applicant used the parcel for patriotic, civic, and

charitable purposes during the 1995 assessment year and therefore, the parcel qualifies for an exemption for the year in question.

Findings of Fact:

1. The jurisdiction over this matter and the position of the Illinois Department of Revenue, (hereinafter the "Department"), that Carroll County Parcel Index No. 10-900-003-00 did not qualify for a property tax exemption for the 1995 assessment year, were established by the admission into evidence of Department's Ex. Nos. 1 through 4.

2. The applicant was granted a charter pursuant to the Constitution of The American Legion on August 23, 1920. With the acceptance of the charter, the applicant is bound by the National Constitution to uphold the purposes enumerated in the preamble of that document which are:

To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate a one hundred percent Americanism; to preserve the memories and incidents of our association in the Great War; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. (Dept. Ex. No. 1)

3. The applicant is incorporated under the General Not for Profit Corporation Act of the State of Illinois. (Dept. Ex. No. 1)

4. The applicant purchased the property at issue and received confirmation of the purchase by a warranty deed dated November 12, 1993. (Dept. Ex. Nos. 1 and 3)

5. The subject parcel is about .7 of an acre and contains a building that formerly was used as a church. The building is approximately 100 years old. The parcel is located about two miles from the Mt. Carroll city limits. (Dept. Ex. No. 1; Applicant's Ex. Nos. 1, 3, 4, 5, 9 and 12)

6. The applicant uses the building for storage of hospital beds, wheelchairs, canes, crutches, lift chairs, and commodes. The equipment is loaned

to people in the surrounding area on an as-needed basis. (Dept. Ex. Nos. 1, 3; Tr. pp. 14-18, 23-25; Applicant's Ex. Nos. 2, 3, and 8)

7. American flags and ceremonial rifles are also stored in the building. The flags are flown in downtown Mt. Carroll on patriotic holidays; the rifles are used at military funerals. (Dept. Ex. No. 3; Tr. p. 27)

8. There is no running water or sewer line in the building. The applicant does not heat the building in the wintertime. (Dept. Ex. No. 1; Tr. pp. 8, 22)

9. The applicant holds its meetings in the back room of a tavern in Mt. Carroll. (Tr. pp. 21-22)

10. The applicant requests a donation for the loaned hospital equipment; however, often the equipment is returned to Mr. Kehl's patio with no remuneration. The applicant has never refused to loan equipment if the equipment was available. (Tr. p. 29, 33)

11. The applicant delivers the equipment and maintains it. (Dept. Ex. No. 1; Tr. p. 30)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly

against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

In the case of North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), the Supreme Court of Illinois held that the predecessor statute to 35 ILCS 200/15-145<sup>1</sup> was constitutional and that the provision granting an exemption to a veterans organization required the organization's use to encompass all three of the required uses: civic, patriotic, and charitable. The Court went on to hold that the use by North Shore Post No. 21 of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily for members, necessitated a finding by the Court that the primary use of the property was not exempt.

I agree that the facts in this situation are very different from the applicant's activities in North Shore Post No. 21. The Court has stated, however, that the use must be civic, patriotic, and charitable. The Court failed to define civic use, and I have been unable to find Illinois case law that defines civic. However, in C.I.R. v. Lake Forest, Inc., 305 F.2d 814 (1962), the United States Court of Appeals, Fourth Circuit, in regards to a requested exemption from income tax for a civic corporation, found civic to mean proper to citizens, of or pertaining to a city, borough, municipality, or citizenship. *id* at 817 This definition is consistent with Black's Law Dictionary which defines civic as "pertaining to a city or citizen, or to citizenship." While these definitions are not binding, I find them instructive and persuasive.

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<sup>1</sup>. At the time Northshore Post No. 21 was decided, the exemption for veterans organizations was found at Ill. Rev. Stat. 1963, chap. 120, par. 500.18.

The applicant uses the property for charitable purposes when it loans the equipment to residents of the community at no cost. The applicant fulfills the patriotic prong of the test by storing flags and ceremonial guns on the parcel for use in parades and at military funerals. Regarding the question of civic use, the applicant puts the flags stored on the property up in Mt. Carroll on Memorial Day, Veterans Day and all patriotic holidays. Frankly, if this applicant does not qualify for this exemption, I do not know of another use that would qualify. The applicant has shown that the activities it conducts satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires.

I therefore find that the applicant has sustained its burden of proof to qualify for exemption. I recommend that Carroll County Parcel Index No. 10-900-003-00 be exempt from property tax for the 1995 assessment year. What a wonderful thing they are doing for the community.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge  
July 21, 1997